

FDf Scotland Response to the Consultation Reducing Health Harms of Food High in Fat Sugar or Salt

This submission is made by the Food and Drink Federation (FDF) Scotland. FDF Scotland represents the food and drink manufacturing industry in Scotland. We are Scotland's largest manufacturing sector, accounting for 30% of total manufacturing turnover and our gross value added to the economy is £3.8bn, representing 29.7% of Scottish manufacturing value added. We have 1,015 food and drink manufacturing businesses, employing 45,000 people, which represents 25% of the Scottish manufacturing workforce.

Our response to the consultation questions is provided below. However, we first set out some general concerns regarding the proposals and the policy development to date.

FDF Scotland fully supports the goal of combatting obesity and fostering public health. However, to be effective, solutions need to be fully considered, evidence-based and targeted at where the problem is. We believe that the proposals as set out in this consultation are, at present, inadequately defined. This makes it difficult to fully understand the scope and scale of the impact that they would have on our businesses and the industry more broadly – which our analysis to date suggests would be materially significant.

We consider the consultation does not provide credible evidence that banning in store promotions of 'discretionary foods' will reduce obesity rates. Indeed, whilst the authors of the *NHS Health Scotland (2017) Rapid evidence* review relied on in the consultation, clearly support restrictions, they acknowledge the evidence base does not exist to support this.

“In particular, it is worth noting that there are only a small number of studies in this area, and no studies outlining results from the implementation of restrictions on promotions of HFSS food and drink.”

There are a number of evidence based approaches that would more effectively achieve the Government's objectives as outlined in the [McKinsey Report](#) which provides an economic analysis of interventions to reduce prevalence of obesity. The report lists portion control and reformulation as the highest impact measures (which could be hampered by promotional restrictions), and in comparison, interventions on price promotions were found to have a much lower impact for the population and lower strength of evidence.

Given no studies look at restricting promotions, perhaps the most relevant “controlled experiment” has taken place in Canada over the past four decades. This relates to marketing of products as opposed to promotion of products, however it does indicate how a dramatic reduction in exposure did not result in a change to obesity rates, if anything they became worse in the controlled area. Quebec has banned the marketing of foods and other products to children since 1980, while the rest of Canada has not. Nearly 40 years later, we see that childhood obesity and overweight rates in Quebec are now higher than in the rest of Canada, and these rates have grown faster than elsewhere in Canada. Indeed, the Quebec rates of obesity and overweight have continued to climb over the past decade while these same rates

have been declining elsewhere in Canada.¹ Not only that, but dietary intake data examining consumption of the specific foods that are most heavily promoted to children outside of Quebec, but which are not permitted to be promoted within Quebec, actually suggest that Quebec children consume more calories from these products than do non-Quebec children.² Four decades of marketing restrictions have not yielded the expected results.

Freedom of commercial expression is an important principle, as is free competition between goods lawfully placed on the market.

It is critical that, in considering whether to bring forward measures on this issue, Scottish Government considers carefully and takes expert advice on whether the consequences, intended or otherwise, of those proposals would be an infringement of commercial freedom or a distortion of competition between products.

Question 1: To what degree do you agree or disagree that mandatory measures should be introduced to restrict the promotion and marketing of foods high in fat, sugar or salt to reduce health harms associated with their excessive consumption?

FDF Scotland strongly disagree.

We are deeply disappointed that the Scottish Government is pressing ahead with legislation to restrict food and drink promotions, especially since there is no evidence of the effectiveness of these measures in tackling obesity as alluded to by the Health Minister in the foreword of this consultation:

“No country has yet introduced such measures, so we cannot use the experience of others to demonstrate likely success.”

Promoting foods to adults is a fundamental commercial freedom. It underpins the healthy, vibrant and innovative market for food and drink that Scottish shoppers enjoy.

Food and drink are deeply embedded in our history and our culture. Our relationship with food and drink goes way beyond its intrinsic nutritional value; eating and drinking and the occasions that surround them are part of what defines us.

¹ When Quebec first imposed its marketing restrictions, Quebec children had essentially the same likelihood of being obese or overweight as Canadian children in general. (Willms JD, Tremblay MS, Kazmarzyk PT. *Geographical and Demographic Variation in the Prevalence of Overweight Canadian Children*. Obesity Research; 2003; 11(5): 668-673, at 670.) But in the first 15 full years of the Quebec ad ban, the prevalence of overweight and obesity amongst Quebec children grew by 140% – a faster increase than in numerous provinces where no restrictions were in place, including Ontario, Manitoba, Saskatchewan, and Alberta. (Willms at 670.) And in more recent years, Quebec’s childhood obesity problem has continued to worsen and has now far surpassed that of the rest of Canada (where the problem is actually in decline). Indeed, Quebec’s rate of childhood obesity and overweight rose substantially between 2004 and 2015, and stands now at 23.2% amongst children 2-11, whereas the rate in the rest of Canada (where no marketing restrictions are in place) declined over that same period to 18.7%. (Statistics Canada, Measured children and youth body mass index (BMI) (Cole classification), by age group and sex, Canada and provinces, Canadian Community Health Survey – Nutrition <https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1310079701>) .

² Ipsos FIVE Consumption Database data regarding number of “consumptions” of each product per year per child. That number of “consumptions” is then multiplied by the calories per consumption (using standard serving size) to arrive at the number of calories of that food consumed each year per child.

FDF Scotland is proud to be part of the Scotland Food and Drink partnership, aiming to double the turnover of the Scottish food and drink sector by 2030. It is likely that the proposed restrictions will disproportionately affect smaller Scottish manufacturers whose market is predominately in Scotland and who use pricing and promotions to encourage shoppers to switch brands within a category.

FDF and its members have a voluntary commitment to play their part to help consumers achieve a balanced diet within a healthy lifestyle. Over the past five years, this voluntary approach has reduced energy in the average basket by 5.5% and sugars by 12.1%³. For example, 88% of Walkers Crisps single serve packs are 135 calories or less, and through changing the oils used to produce crisps and savoury snacks, they have reduced saturated fat by over 70%.

The pace of this work is accelerating. It can be seen on every supermarket shelf whether by way of reformulation – changing the recipes of products – or in changing to more appropriate portion sizes. Marketing mix is also important as consumers are encouraged to consider new innovations. Kantar World panel data indicates that the majority of the volume sold on promotion (59%) is the result of shoppers shifting purchasing from competing products whether owned by the promoting manufacturer or a competitor⁴.

The proposals outlined in the consultation risk stalling voluntary reformulation by manufacturers. Under the proposals, the healthier options including reformulated products within each category would still not be permitted to be promoted. We believe that a reformulated biscuit that is lower calorie is a good outcome and a more realistic switch for the consumer to make than switching to a different category or to stop buying altogether. We believe there would be more of a substantive and sustainable public health outcome if promotions, along with other levers, were recognised as a useful tool to nudge consumers towards healthier alternatives within a category.

FDF Scotland is delighted to have received Scottish Government funding to recruit a reformulation innovation specialist to support SMEs to reformulate and we will shortly be publishing a piece of research to define exactly what kind of support companies need to reformulate. Stopping one of the key mechanisms that companies use to bring new products to market could jeopardise the success of this programme.

Furthermore, promotions are not only a mechanism to encourage consumers to try new products, but a means for some customers to access luxury brands. Data Kantar Worldpanel supplied to Food Standards Scotland suggests that it is branded, luxury or new products which are promoted more, thus indicating there will be a differential commercial impact on this proposal for branded manufacturers compared to retailers⁵.

Question 2: Should this policy only target discretionary foods? [confectionery, sweet biscuits, crisps, savoury snacks, cakes, pastries, puddings and soft drinks with added sugar]

³ Kantar Worldpanel data

⁴ [PHE Sugar Reduction: The evidence for action, Annexe 4](#)

⁵ [FSS Monitoring retail purchase and price promotions in Scotland \(2010 – 2016\)](#)

No. No foods or drinks should be targeted.

Demonising consumption of individual products and or macro-nutrients is not helpful for consumers. All foods and non-alcoholic drinks can be consumed as part of a healthy balanced diet. Rather than demonising certain products we believe consumers should be helped to understand how to structure a balanced diet, including on appropriate portion sizes and frequency of consumption.

In addition, the named categories are mainly the same as those that have Public Health England (PHE) reformulation guidelines to reduce sugars. Companies will introduce the reformulated products across the UK, and by targeting these foods specifically, the ability of companies to undertake the reformulation work being asked for is being jeopardised.

The industry has already introduced voluntary calorie caps on many single serve items such as chocolate bars and individual ice-creams and is now working towards calorie caps introduced on single serve items as part of the PHE sugars reduction programme.

In addition, FDF members are committed to educating consumers on appropriate frequency of consumption.

Question 3: Should this policy treat ice-cream and dairy desserts as discretionary foods?

We repeat that we fundamentally disagree with the proposals outlined in the consultation and as our response to question 2 states, we do not believe demonising individual product categories is effective in helping consumers making healthier choices.

When considering these categories specifically, we believe SG should also consider the potential impacts to micronutrient status of demonizing these foods. The National Diet and Nutrition Survey indicates 11% of teenage boys and 22% of teenage girls are below the LRNI for calcium; restricting the opportunity to promote these desserts could unintentionally lead to a further reduction in calcium intakes⁶.

Although the policy focus is on decreasing obesity, we believe consideration should also be given to malnutrition, particularly in the elderly. Malnutrition is a major public health issue, which according to the British Dietetics Association (BDA) costs the NHS in excess of £13 billion per year. There are approximately 3 million people in the UK who are malnourished or at risk of malnutrition; 93% of these are thought to be living in their own homes. One of the suggested tips to prevent malnutrition in this group is to have a dessert after both lunch and dinner⁷.

Question 4: Please comment on our approach to defining categories and exclusions of foods/products from those definitions (paragraphs 9-11)?

⁶ [NDNS Years 7 and 8.](#)

⁷ [BDA Food fact: Malnutrition](#)

If the SG insists on progressing the measures outlined in the consultation then we agree there needs to be an expert technical group to define the categories and exclusions.

We believe that the categories need to make sense to the food industry so that it is clear which foods are subject to restrictions, and restrictions can be implemented simply by non-technical experts, for example store managers. As part of the PHE reformulation work, government encourages industry to provide feedback on how the categories are defined, and to suggest where products would best sit. This helps ensure that the categories make sense to companies who are working with them; for example, drinking yoghurt was originally defined as a separate category under the sugars reformulation work, but at industry's suggestion this was moved to the 'yoghurt' category. In this instance, feedback has been gained through stakeholder meetings and written comment.

Similarly, any exemptions need to be clear, and reflect products that are on market, or likely to come to market, and make technical and practical sense to the companies who produce the foods and retailers and caterers who stock them.

We ask the SG that FDF Scotland and our members form part of the technical advice to implement the final policy.

Question 5: In relation to the foods being targeted, should this policy seek to

Restrict multi-buys

Restrict sales of unlimited amounts for a fixed charge

Not restrict temporary price reductions

Not restrict multi-packs?

Other – please specify

No foods should be targeted.

Please explain your answers.

We strongly disagree that any promotional mechanism should be targeted. We consider that such far-reaching policy will have fundamental effects on the market and will impact competitor products differentially depending on different business models.

For example, it is often smaller companies, who cannot afford to advertise, who use promotional mechanisms to enable them to stand out to customers.

A further concern particularly for larger businesses, is the impact on packaging and other items (for example marketing programs) that may not be produced exclusively for the Scottish market. It is impractical for many food manufacturers to design packaging solely for the Scottish market, which would be needed to avoid making value claims. Food manufacturers would be forced to either do this (at substantial inefficiency and cost, which would then be passed along to consumers) or to exit the Scottish market thereby limiting consumer choice. Neither result is positive from a consumer standpoint. Along the same lines, manufacturers

who run promotions relating to events such as major sporting events, film releases, etc. across the whole of the UK, Europe, or globally would find themselves having to exclude Scotland from these promotions, which would be complex and costly to do.

We welcome that temporary price reductions and multipacks will not be banned under proposals however our understanding is that retailers would not be able to communicate these savings to consumers. This will result in less clarity for the consumer making it difficult to make decisions about the best value. Supermarkets have been criticised by the consumer body Which? For not making promotions clear to consumers⁸.

We agree that multipacks should not be restricted, and we are unaware of any evidence that indicates multipacks encourage over consumption.

Question 6: Please comment on the approach we are proposing to take to restricting forms of promotion and marketing outlined in section 5.

FDF is opposed to any restrictions relating to the promotion of certain categories of foods. As outlined in the consultation document, the list of other forms of promotion and marketing that would be subject to restrictions is “not an exhaustive list” which makes it difficult to comment fully on proposals, but what is clear is these amount to a substantial burden to business.

The following concerns have been raised with FDF Scotland by our members who use a variety of promotional and marketing mechanisms.

- Placement within the store - Reduces in store “theatre”. The end of supermarket aisles (endcaps) are important for brand awareness but also provide a practical purpose as additional storage space for goods, particularly Easter and Christmas goods. It will be difficult to govern placement within store - in many stores there is no clear delineation between aisles/checkouts and often small outlets will put stock wherever it is practical to display it.
- Promotion of value, shelf edge displays and signage and in-store advertising – See our response to Q5 regarding previous Which? “super complaint” to the CMA and UK Government regarding transparency and visibility to consumers.
- Upselling – This is a mechanism used by retailers, as representatives of the manufacturing sector we are not commenting on this proposal.
- Coupons – These are used to encourage a consumer to switch within a product category and are important to allow consumers to trial new products. Several members use coupons as a way of resolving consumer complaints relating to the quality of a product.
- Purchase rewards – These are used to build brand loyalty, not to increase consumption or drive impulse purchase.
- Free samples – Free samples are an important mechanism to help market Scottish produce to tourists e.g. at the Royal Highland Show where over 100,000 visitors come from all over the world to sample Scotland’s larder. They can also encourage people to try new products to encourage switching, for example many soft drinks

⁸ <https://www.gov.uk/government/news/progress-on-clearer-pricing-in-supermarkets>

companies provide free samples of their zero and low sugar brands, and this has helped successfully move the market so that more low sugar drinks are sold compared to full sugar.

- Price marked packs (PMPs) – We agree that PMPs should not be seen as intrinsically promotional. They are an effective way to communicate the recommended retail price to consumers so that they know they are not over-paying for a product.

Question 7: Should the restrictions apply to any place where targeted foods are sold to the public, except where they are not sold in the course of business (e.g. charity bake sales)?

Other organisations are better placed to answer this question.

Question 8: Please comment on whether, and if so to what extent, restrictions should be applied online. Please explain your answer.

We reiterate again that we are opposed to mandatory measures that restrict promotion and marketing of certain foods, however, if the Scottish Government progresses some of the restrictions outlined in the consultation, we believe restrictions should be applied consistently both on and offline.

Question 9: Should restrictions to displaying targeted foods at end of aisle, checkouts etc., not apply where there is no reasonable alternative to displaying them elsewhere? Please explain your answer.

We do not believe there should be restrictions on where foods can be displayed in store. As our response to Q6 describes, end of aisles are a useful way of storing products and brands use them as a way to encourage in-category switching.

Where practical, many stores have already voluntarily removed confectionery from their check-outs therefore we don't believe that complicated legislation is necessary.

Retailers are better placed to comment on the challenges of space constraint and the cost of re-designing shelf-space. It is clear the wide variety of store shape and size introduces a fundamental problem to this policy. It is difficult to see how many smaller format stores could practically introduce the policies outlined, and they may simply be unable to stock certain products which in turn will impact trade. However, if an exemption is introduced this will mean that competing businesses have to abide by different policies.

**Question 10: Should food marked as discounted because it is close to expiry be exempt from:
Positioning restrictions (end of aisle, checkouts etc.)
'Promotion of value' restrictions? Please explain your answer.**

Anecdotally we are not aware of retailers placing products close to the best before date at the end of aisles or at check-outs.

Regarding the proposed restrictions on “promotion of value”, this will have the biggest relevance to the Bakery and chilled dessert categories. The Scottish Government’s own ambition is to reduce food waste from farm to fork by 33% by 2025. Restricting discounted short-dated food could potentially increase food waste in the retail sector.

Question 11: Please list any other exemptions we should consider. Please explain your answer.

We believe that no category should be subject to a complete ban on promotions which will simply stifle innovation and competition.

We also believe reformulation should be rewarded and thus any promotional restrictions must not undermine work undertaken by companies as part of the UK childhood obesity plan and the Scottish Government funded reformulation support. Products that are nutrient reduced or portion sized reduced in response to these programmes, should be allowed to be promoted.

We ask that any technical group formed to define categories also considers this.

Question 12: Please comment on our proposals for enforcement and implementation outlined in section 8.

FDF have concerns about this being enforced consistently. Local Authorities in Scotland have seen large reductions in funding from Scottish Government and in relation to Trading Standards visiting food businesses, a risk based approach is being applied.

We think it is absurd that Scotland could end up with legislation that could see Trading Standards officials entering premises and issuing fixed penalty notices for e.g. chocolate bars on the counter of a small convenience stores.

If the government presses ahead with the proposals set out in this document, there will need to be time and resource dedicated to informing Scotland’s 1015 food manufacturers, 65,000 retailers and 32 Local Authorities. Anecdotally, for the carrier bag charge this cost over £200,000 and required bespoke training resources as well as a full-time project manager employed for 2 years and dedicated resource to staff helplines to answer questions from the public and retailers.

Question 13: Please comment on the proposed flexible approach outlined in section 9.

This creates huge concern and allows the government to shift the goalposts at any time for any reason. It would allow the government to take an even tougher stance on promotions and potentially target other categories in future. We strongly urge the government to be clear about the implementation, what the measurable outcome of the final proposals will be and to allow time for any policy to be measured and evaluated.

Question 14: If you sell, distribute or manufacture discretionary foods, please comment on how the restrictions in this consultation paper would impact you.

Please explain your answer.

FDF represents a very wide range of food businesses. The restrictions would affect our members in the following ways:

Stifle innovation – Businesses will be unwilling to take risks to develop new products if they cannot promote them to customers.

No incentive to reformulate – If businesses cannot promote or market healthier versions of products they become commercially unviable; this risks stalling the successes of PHE's and Scottish Government's reformulation programmes.

Factories are set up to run as efficiently as possible. Even a simple labelling change for a company can cost several thousand pounds. Changing a product or developing new products is extremely costly for businesses. Costs include innovation and R&D costs, purchasing of consumer data, quality and safety testing, purchasing new equipment/machines, artwork, design and labelling costs, lab fees and marketing and promotion to ensure the product is commercially successful. It is also strange to suggest that a manufacturer who specialises in one type of product e.g. cake would change their business model to make something entirely different and not within the proposed categories.

If the Scottish Government implements the proposals, there will be very few effective advertising/promotional mechanisms the food and drink supply chain can implement. For smaller companies with limited budgets, an advertising campaign may not be feasible and promotions maybe the only marketing mechanism they can afford.

Redundancies – FDF has spoken to a number of member companies from large to small. Member companies who specialise in e.g. making biscuits, have reported that they could see staff redundancies of over 10% as a result of the proposals.

Question 15: What support do sellers, distributors and manufacturers need to implement the restrictions effectively? Please explain your answer.

We do not support implementation of any of the restrictions. If the government presses ahead then we suggest the Scottish Government will need to fund a project manager and develop training and other resources in various media for the food and drink supply chain. This will need to be disseminated to any food and drink manufacturers who supply Scotland across the UK as well as the retail sector.

Our response in Q12 makes reference to costs associated with implementing the Carrier Bag charge in Scotland, this will be more complex and government budget could be significantly higher.

Question 16: How would the proposed restrictions impact on the people of Scotland with respect to age, disability, gender reassignment, pregnancy and maternity, ethnicity, religion or belief, sex, sexual orientation or socioeconomic disadvantage?

Please consider both potentially positive and negative impacts, supported by evidence, and, if applicable, advise on any mitigating actions we should take.

Other organisations are better placed to answer this question more broadly. We would note the whole purpose of this policy is to look to increase the cost of food. As lower socioeconomic groups spend a greater proportion of their income on foods, then the policy is clearly regressive and will impact these consumers to a greater extent. This is set in a context of rising food prices.

Question 17: Please outline any other comments you wish to make.

We urge the Scottish Government to acknowledge the huge amount of work that manufacturers have already undertaken to help consumers to make healthier choices. A full report of our members actions is available here:

https://www.fdf.org.uk/corporate_pubs/feeding-change-report.pdf

About the food and drink manufacturing sector in Scotland

- Employs around 45,000 people, 25% of the Scottish manufacturing workforce
- Adds £3.8bn GVA to the Scottish economy, 29.7% of Scottish manufacturing value added
- Is Scotland's largest manufacturing sector, accounting for 30% of total manufacturing turnover
- 95% of our 1015 businesses are SMEs

The following Associations actively work with the Food and Drink Federation:

ABIM	Association of Bakery Ingredient Manufacturers
ACFM	Association of Cereal Food Manufacturers
BCA	British Coffee Association
BOBMA	British Oats and Barley Millers Association
BSIA	British Starch Industry Association
BSNA	British Specialist Nutrition Association
CIMA	Cereal Ingredient Manufacturers' Association
EMMA	European Malt Product Manufacturers' Association
FCPPA	Frozen and Chilled Potato Processors Association
FOB	Federation of Bakers
GFIA	Gluten Free Industry Association
PPA	Potato Processors Association
SA	Salt Association
SNACMA	Snack, Nut and Crisp Manufacturers' Association
SSA	Seasoning and Spice Association
UKAMBY	UK Association of Manufacturers of Bakers' Yeast
UKTIA	United Kingdom Tea & Infusions Association Ltd

FDF also delivers specialist sector groups for members:

Biscuit, Cake, Chocolate and Confectionery Group (BCCC)
Frozen Food Group
Ice Cream Committee
Meat Group
Organic Group
Seafood Industry Alliance